FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE
CRIMINAL APPLICATION . 6867 OF 2005
in
Cri. Writ Petition No. 1088 of 1995

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. Court's or Judge's orders

Mr. R.V. Govilkar for petitioner.
Mr. R.F. Lambay PP for Union of India.
Mr. A.S. Gadkari APP for State.

CORAM: B.H.MARLAPALLE
&
SMT. R.S. DALVI JJ.

DATE: 13/1/2006

P.C.:

Heard. Mr. Govilkar learned counsel for the applicant and the learned counsel for Union of India. Criminal writ petition no. 1088 of 1995 was initially dismissed for default by this court on 9.6.2003 and on an application being moved it came to be restored by order dated 12.6.2003. It was listed in office objections and therefore a conditional order came to be passed on granting the petitioners time to remove the

office objections upto 31.1.2005. The petitioners failed to do so and therefore the said petition came to be dismissed for default. Criminal application No. 68 of 2005 has been filed for restoration of the said petition, but belatedly. Hence this application for condonation of delay.

As per the office note the delay caused is 230 days in applying for restoration of criminal writ petition no. 1088 of 1995. It is stated that on account of/ inadvertence of advocate's clerk the writ petition which was not listed on the board on 20.1.2005 could nto be noticed and it is further contended that the petition was shown to be pending till July 2005. As per the petitioners the petition was shown to be so updated on 20.1.2005 and therefore they were under a bona fide belief that the writ petition was still pending.

We are not impressed by these justifications. However, the petitioners claim to be the tenants of the premises which have been vested with the Union of India under The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976and they were protected by this court by way of interim order right from 31.10.1995. The learned counsel for the Union of India has pointed out that writ petition no. 714 of 1997 in respect of the same premises is pending before this court on the original side and the said petition has been

filed by the owners of the premises and as vested in favour of Union of India. By way of operation of the statutory provisions the petitioners have no locus standi to seek protection or seek any orders against Union of India. Reliance has been placed on the decision of this court in writ petition No. 353 of 2002 decided on 18.3.2002.

We are satisfied that the petitioners are required to be heard and it would not be in the interest of justice that they are unsuited for technical reasons and more so on account of the reasons attributable to their learned advocate. We are therefore inclined to condone the delay but by imposing costs.

Hence the application is allowed in terms of prayer clause 16(a), subject to payment of costs quantified at Rs.1000/-, which shall be remitted with the Legal Services Authority of this court within a period of one week.

(SMT. R.S. DALVI J.) (B.H. MARLAPALLE J.)